

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4686 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MOHD.ALTAH MOHD.HUSSAIN SHEIKH

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 4686 of 2001  
MR HR PRAJAPATI for Petitioner No. 1  
MR MA BUKHARI, AGP for Respondents No. 1-3
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. The petitioner detenu has filed this petition challenging the detention order passed under the provision of sub-section 1 of section 3 of the Gujarat

Prevention of Anti-social Activities Act, 1985. The detention order is produced at page 15 which is dated 19.3.2001. Reference of one criminal case is given which is said to have been pending in the competent criminal court. The said case is filed under sections 395, 397, 447, 34, 120-B of IPC and 135(1) of Bombay Police Act. Detailed description is given about the activities of the detenu in the detention order regarding committing robbery, theft and inflicting blows to certain people etc. It is stated in the detention order that, looking to the activities and offences in which the petitioner is involved, he is a dangerous person as per the provisions of the aforesaid Act.

#. The aforesaid detention order is challenged on various grounds. One of the contentions of Mr.Prajapati is that eventhough the petitioner is in judicial custody, yet detention order is passed against him. He further submitted that, there is no explanation given by the State as to why it was necessary to detain the petitioner under the preventive detention even though the petitioner was already in judicial custody at the relevant time. Mr.Prajapati has relied upon the observations made by the detaining authority at page 19. The detaining authority has observed that the case against the petitioner is pending in the court and that he is in judicial custody. It is mentioned that the petitioner has applied for bail, but no order is passed so far. It is further stated that, after being released on bail, the detenu will again likely to continue such activities and thereafter it will be difficult to get such bail cancelled and such procedure will take long time. It is argued by Mr.Prajapati that there is no material worth the name with the detaining authority for coming to the conclusion that the petitioner is going to be released on bail especially when his application is still pending before the Sessions Court and no order is yet passed one way or the other.

#. It is required to be noted that the bail application of the petitioner is yet pending and at that stage when it is sub-judice, it is not proper on the part of the detaining authority to observe that after getting the bail, the petitioner is likely to continue with the said activities. The detaining authority has not stated in the order that in case if the petitioner is released on bail, he is likely to continue the said activities. Instead what is stated in the detention order is that, after getting bail, he is likely to continue the said activities again. There is nothing in the order to show that as to from which material, the detaining authority

has come to the conclusion that the petitioner is going to be released on bail. Even, no affidavit in reply has been filed in this petition.

#. Mr.Prajapati has relied on the decision of the Apex Court reported in AIR 2000 SC 3675. The relevant observations made in paragraphs 4 to 7 reads as under :

"4. In Agustin's decision (1994 Supp(2) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be in the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however

is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

#. In the instant case, the detaining authority has not stated anything as to on what basis the aforesaid opinion is formed in the detention order that the petitioner is going to be released on bail. It would have been different thing if there was some observation in the detention order that in case the petitioner is released on bail, he may repeat the aforesaid activities, but unfortunately, there is no such recital in the detention order and there is no explanation worth the name for coming to the aforesaid conclusion regarding as to on what basis the decision is reached that the petitioner is going to be released on bail.

#. Mr.Prajapati also submitted that, in similar type of situation and similar type of observation in the detention order, this Court (Coram : A.M.Kapadia,J) vide order dated 4.10.2001 in the petitions being Special Civil Application Nos. 2632, 3416, 3717, 2636, 4089 of 2001 has already released the concerned detenu from the detention. Therefore, in view of the aforesaid situation, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 19.3.2001 is quashed and set aside. The detenu Mohd. Altaf Mohd. Hussain Sheikh is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(P.B.Majmudar, J)  
(pathan)

